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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,218	09/28/2001	John David Tucker	KCC-15,529	7138
35844	7590	09/22/2004	EXAMINER	
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			TRAN, THAO T	
			ART UNIT	PAPER NUMBER

1711

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/967,218

Applicant(s)

TUCKER ET AL.

Examiner

Thao T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-23 is/are pending in the application.
- 4a) Of the above claim(s) 12-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-11, 20-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Response to Amendment

1. This is in response to the Amendments received on April 5, 2004 and the Response filed on August 10, 2004 to the Restriction requirement of July 14, 2004. The Affidavit filed on April 5, 2004 is also acknowledged.
2. Claims 1, 4-23 are currently pending in this application.

Election/Restrictions

3. Applicant's election with traverse of claims 1, 4-11, and 20-23 in the reply filed on August 10, 2004 is acknowledged. The traversal is on the ground(s) that the examiner has issued four separate Office actions in which all of these species have been examined. This is not found persuasive because the examiner has recognized that a restriction requirement would be proper upon the amendments filed on April 5, 2004.

The requirement is still deemed proper and is therefore made FINAL.

4. Claims 12-19 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on August 10, 2004.

Claim Rejections - 35 USC § 112

5. In view of the Office action of January 5, 2004, the rejection of claims 1-11, under 35 U.S.C. 112, first paragraph, has been withdrawn due to the Amendments made thereto.

Claim Rejections - 35 USC § 102

6. In view of the Office action of January 5, 2004, the rejection of claims 1, 4-5, 8-11, and 20-23, under 35 U.S.C. 102(e) as being anticipated by Tucker (US Pat. 6,638,636), has been withdrawn due to the Affidavit filed on April 5, 2004.

7. In view of the Office action of January 5, 2004, the rejection of claims 1, 4-6, 10-11, and 20-23, under 35 U.S.C. 102(b) as being anticipated by Collier, IV et al. (US Pat. 5,288,791), has been withdrawn due to the Affidavit filed on April 5, 2004.

8. Claims 1, 4-5, 7, 9-10, and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogale et al. (US Pat. 5,346,756).

Ogale teaches a nonwoven textile material, comprising fibers; each fiber comprising a blend of polypropylene and various amounts of ethylene-propylene copolymer with optionally minor amounts of a diene (see abstract; col. 1, ln. 34-41, ln. 64 bridging col. 2, ln. 12; Examples 1-2).

In regards to claims 1 and 20-22, Ogale teaches the amount of ethylene-propylene copolymer to be 1% (20% x 50%) (see col. 2, ln. 35-37, Examples 1-2) or 10% (see col. 2, ln. 26-28), which reads on the instantly claimed ranges.

In regards to claim 4, Ogale teaches the use of ethylene-propylene-diene monomer (see col. 2, ln. 8-11; col. 4, ln. 51-53).

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In regards to claims 5, 7, 9-10, Ogale teaches the textile fibers being formed into spunbond fibers, yarn, woven and nonwoven textile materials (see col. 1, ln. 12-17; col. 12, ln. 47-50).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 6, 11, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogale as applied to claim 1 above, further in view of Collier.

Ogale is as set forth in claim 1 above and incorporated herein.

Ogale is silent with respect to the textile fibers being formed into a staple fiber or an absorbent article.

Collier teaches staple and absorbent fibers, as well as spunbond and nonwoven fibers being formed from a fiber comprising polypropylene and an impact modifier styrene-poly(ethylene-propylene)-styrene (see col. 5, ln. 3-4; col. 13, ln. 33-40).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have used the fibers of Ogale in forming staple and absorbent fibers. This is because Applicants have not disclosed that the products formed by the fibers are critical in the invention; and Collier teaches that the same fibers would be used in forming staple and absorbent fibers; as equally well as forming spunbond fibers, yarns, woven and nonwoven materials.

Response to Arguments

11. Applicant's arguments filed on May 30, 2003 have been fully considered but they are not persuasive.

With respect to the remark that claim 1 now recites a far less amount of an impact modifier, it is pointed out in paragraph 10 above that the amount of the ethylene propylene copolymer does read on the instantly claimed range.

Applicants further point out that the olefin polymer material taught by Ogale is not EPDM because the reference teaches sequential polymerization of more than just ethylene, propylene, and a diene. Ogale does teach sequential polymerization. However, the reference specifically discloses that in sequential polymerization, the propylene polymer is formed in one stage while the olefin polymer in another stage (see col. 9, ln. 64-66) and that the order of the sequence is not critical (see col. 7, ln. 45-48). Therefore, the polymers are not formed at the same time; and the olefin polymer in the presence of a Ziegler-Natta catalyst system would form EPDM, whether in the first or second stage.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

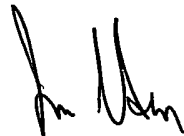
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 571-272-1080. The examiner can normally be reached on Monday-Friday, from 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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September 20, 2004



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Supervisory Patent Examiner
Technology Center 1700